

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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PUBLIC SERVICE COMMISSION

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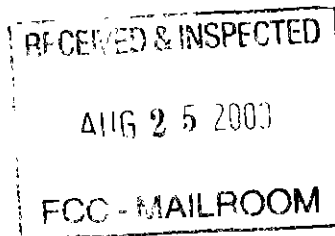
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General Counsel

JACLYN A. BRILLING
Acting Secretary

August 18, 2003

Hon. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals II
445 12 St., SW
Washington, D.C. 20554

RE: Comments of the New York State Department of Public
Service in the Matter of Lifeline and Link-Up;
WC Docket No. 03-109

Dear Secretary Dortch:

The New York State Department of Public Service (NYDPS) submits these Comments in response to the Commission's Notice of Proposed Rulemaking, released June 9, 2003, in the above-captioned proceeding. The Commission seeks comment on the *Recommended Decision* of the Federal-State Joint Board on Universal Service (Joint Board) regarding modifications to the Commission's federal Lifeline and Link-Up programs.¹ The NYDPS supports Joint Board's recommendations for enhancing these programs.

Specifically, the Joint Board recommends adding an income standard to the default federal eligibility criteria² to make a consumer eligible for Lifeline/Link-Up when the consumer's

¹ Lifeline provides low-income consumers with monthly discounts on the cost of receiving telephone service for a single telephone line in their principal residence. Link-Up provides low-income consumers with discounts on the initial costs of commencing telephone service.

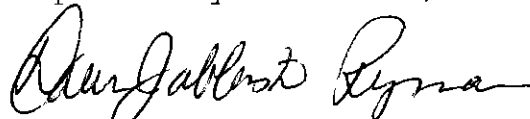
² The default federal criteria are applicable only in those few states that have no state Lifeline/Link-Up program and in states that voluntarily adopt the federal criteria. Otherwise, states may establish their own income-related eligibility criteria.

household income is at or below 135% of the Federal Poverty Guidelines (FPG). The Joint Board also recommends adding two additional assistance programs to the current list of default criteria -- the Temporary Assistance to Needy Families program (TANF) and the National School Lunch free lunch program (NSL). Each of these proposals is intended to expand the means by which low income consumers can demonstrate their eligibility for Lifeline/Link-Up support, thus making the programs more accessible to their intended targets.

At the same time, the Joint Board also recommends that customers claiming Lifeline/Link-up eligibility under the income standard be required to provide some form of documentation of their income before enrollment in the program. The Joint Board further recommends that all states be required to establish procedures to verify consumers' on-going eligibility to receive Lifeline support. These certification and verification proposals are intended to ensure against abuse of the system by non-qualifying individuals.

As is demonstrated by its automatic enrollment/verification systems, New York understands the importance of making Lifeline/Link-Up programs easily available to eligible beneficiaries, while maintaining accountability to limit unwarranted demands on the program. The Joint Board's proposals discussed herein also properly strike that balance. We therefore recommend that the Commission adopt these Joint Board proposals.

Respectfully submitted,



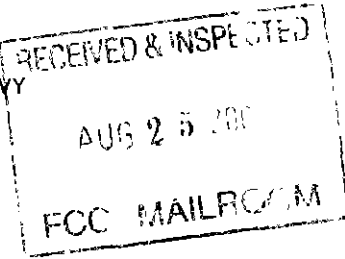
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August 18, 2003

Hon. Marlene H. Dortch
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445 12 Street, SW
Washington, DC 20554

Re: Comments of the New York State Department of Public Service in the Matter of Petition of Verizon Telephone Companies for Forbearance from Current Pricing Rules for the Unbundled Network Element Platform; WC Docket No. 03-157.

Dear Secretary Dortch:

The New York State Department of Public Service ("NYDPS") submits these Comments in response to Verizon's July 1, 2003 Petition for Expedited Forbearance in the above-captioned proceeding. Verizon requests that the Commission forbear from applying its TELRIC pricing rules to the Unbundled Network Element Platform (UNE-P).¹ The reasons given are that "rather than being grounded in the incumbent's existing network, [TELRIC] is based on regulators' conceptions of the hypothetically most efficient technologies and network configuration," and that TELRIC discourages facilities-based investment because it "results in UNE rates that are well below what the ILEC, or any other real-world carrier, could match."² Verizon further states that "TELRIC functions as a 'black box': it lacks any objective criteria or standards upon which to base

¹ Verizon Petition For Expedited Forbearance at i.

² Id. @ 2.

rates and accordingly provides considerable latitude to set rates without regard to costs."³

The NYDPS urges the Commission to refrain from acting on the Petition. Forbearance is unnecessary under the immediate circumstances.⁴ The Chief of the Wireline Competition Bureau recently stated that the Commission will soon be undertaking a review of the TELRIC pricing methodology, and will shortly be releasing an NPRM.⁵ Likewise, Commissioner Martin recently indicated that a review of TELRIC will occur during the coming year.⁶ If the TELRIC methodology is in need of revision, certainly the best forum to address this is in a broader proceeding, rather than via a forbearance petition. Changing the Commission's regulatory regime through an extraordinary, truncated process, without full consideration of the factors underlying TELRIC and the potential consequences of making such a change would be wasteful in view of the more extensive examination that is reportedly not far down the road.⁷

Moreover, any consideration of forbearance by the Commission would be premature until the state proceedings mandated by the Triennial Order have been completed. The February 20, 2003 Triennial Review Press Release suggests that states will be required to evaluate whether UNE-P should be continued or phased out.⁸ It would be more rational to address

³ Id.

⁴ Any decision to forbear will not immediately apply to Verizon New York because under its existing incentive plan, it is required to continue to provide UNE-P at rates previously established under TELRIC until March 1, 2004. (Case 00-C-1945, Order Instituting Verizon Incentive Plan, New York State Public Service Commission, 215 PUR4th 460, 484, issued February 27, 2002.)

⁵ "Maher Highlights Key FCC Action Aside From 'Triennial Review,'" TR Daily, July 28, 2003.

⁶ "Martin Offers Outlook on FCC Proceedings," TR Daily, July 28, 2003.

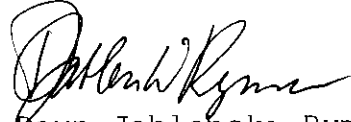
⁷ TR Daily, supra notes 5, 6.

⁸ Commission Press Release, FCC Adopts New Rules for Network Unbundling Obligations of Incumbent Local Phone Carriers, February 20, 2003, at 2.

the continued availability of UNE-P before summarily altering UNE-P pricing.

For the foregoing reasons, the NYDPS respectfully urges the Commission to reject Verizon's petition for expedited forbearance from the TELRIC pricing rules for UNE-P.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dawn Jablonski Ryman". The signature is fluid and cursive, with the first name "Dawn" being the most prominent.

Dawn Jablonski Ryman
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Lifeline and Link-Up

WC Docket No. 03-109

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to increase Lifeline and Link-Up subscribership among those households and communities who need support the most.

II. UUI'S INTEREST IN THIS MATTER

UUI is the only Alaskan native-owned local exchange telephone company in the state of Alaska. UUI commenced operations in 1978 and now serves more than 50 remote native villages spread over 200,000 square miles of territory. The cost of living in these villages is high, due mainly to high transportation costs and small population base. A significant number of the native Alaskans that reside in UUI's service areas rely on subsistence, and have an income at or below the Federal Poverty Guidelines. The telephone penetration rate in these areas is below both the national and Alaskan averages. As a result, UUI's customers are particularly dependent on Lifeline and Link-Up support to be able to afford even basic telephone service.

In order to better serve the needs of its remote and dispersed customer base, UUI has an ongoing commitment to encourage both the scope of and subscribership in the Lifeline and Link-Up programs. UUI has previously filed comments with this Commission to promote strengthening and expanding Lifeline and Link-Up.³ At the state level, UUI has encouraged the Regulatory Commission of Alaska ("RCA") to strengthen its programs, and has recently requested that the RCA adopt the Income-based Criterion recommended by the Joint Board.⁴ Locally, UUI has undergone special

³ *In the Matter of Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Comments of United Utilities, Inc. (dated November 8, 1999) and Reply Comments of United Utilities, Inc. (dated January 6, 2000).

⁴ United Utilities, Inc.'s Request for Investigation into the Eligibility Requirements for the Lifeline and Link-Up Programs, RCA Docket No. U-03-__, filed July 10, 2003. The Joint Board recommends that the Commission "strongly encourage (continued ..)

marketing efforts to promote Lifeline and Link-Up subscribership in the villages it serves.

UUI's comments in this proceeding are part of UUI's focused effort to ensure that all of its customers who are in need receive the maximum benefits for which the Lifeline and Link-Up programs were designed.

III. THE BENEFITS OF AN INCOME-BASED CRITERION IN ALASKA

Alaska consumers would benefit from the Joint Board's recommended Income-based Criterion in addition to the program-based criteria which currently form the basis for Lifeline and Link-Up eligibility. This benefit is clearly demonstrated by the data and projections underlying the Recommended Decision.

In the last several years Alaska has made great strides in improving participation in the Lifeline and Link-Up programs and in 2002 ranked fifth in the Nation in terms of the percentage of eligible customers who subscribe. Nevertheless, there is substantial work to be done to ensure that all those in need of Lifeline and Link-Up support receive it. For example, nearly 40% of those Alaskans currently eligible to receive Lifeline and Link-Up support do not participate in the program. In addition, current eligibility requirements are linked to participation in other federal assistance programs (e.g., Medicaid, Food Stamps, etc.⁵), and, as a result, policies that limit eligibility in these other federal assistance programs are eroding customer access to Lifeline and Link-Up.

(.. continued)

states to incorporate the federal eligibility changes into state programs and to implement them accordingly " Recommended Decision, ¶ 25.

⁵ 47 C F R. § 54.409(b).

Adding an Income-based Criterion, akin to that recommended by the Joint Board, would benefit Alaskan consumers and help ameliorate the threat posed by the shrinkage of enrollment in other federal assistance programs. Data provided by the Joint Board staff demonstrate that an Income-based Criterion set at 135% of the Federal Poverty Guidelines would result in more than 11,000 Alaskan households becoming newly eligible to participate in the Lifeline and Link-Up program and a concomitant increase in subscribership.

In Alaska, a 135% income-based criteria should be considered a minimum. A higher threshold may be warranted. The Federal Poverty Guidelines used by the Joint Board includes a cost-of-living adjustment. This results in Alaska's poverty threshold being around 25% higher than the 48 contiguous states and Washington, D.C. (Hawaii is about 15% higher than average, but 10% lower than Alaska).⁶ This cost-of-living calculation is based on a statewide average. The statewide average, however, is dominated by the price levels in Anchorage. No other state in the country has such a large *intra*-state variation in its cost of living as does Alaska. This means that the standard adjustment to the Federal Poverty Guidelines may be insufficient for regions outside of Anchorage. Given these disparities, it is necessary for the Commission to monitor the results of adopting a 135% threshold and consider raising the threshold in the future (at least in areas such as rural Alaska) in the future.

In sum, an Income-based Criterion would benefit Alaskans by increasing subscribership in Lifeline and Link-Up programs and defraying the loss of eligibility

⁶ See 68 Fed. Reg. 6457 (showing the poverty guidelines in Alaska are higher than for the 48 contiguous states and Hawaii); Recommended Decision, Appendix D (summarizing same).

from the shrinking enrollment of other federal assistance programs. The level at which the Income-based Criterion is set must be monitored for adequacy in Alaska, since the cost of living in Alaska's rural regions is among the highest in the nation.

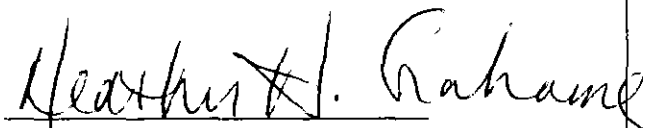
When describing the Commission's launch of public education efforts in some of the most rural areas of the country, Chairman Powell recently noted that Alaskan Native Villages are "typified by significantly lower-than-average telephone penetration rates" and that the Commission would "craft outreach efforts to ensure that all Americans benefit from programs such as Lifeline and Link-Up".⁷ Such an undertaking should begin by supplementing Lifeline and Link-Up eligibility criteria to make sure that none of those in need are inadvertently excluded.

IV. CONCLUSION

For all the foregoing reasons, UUI respectfully requests that the Commission adopt the Joint Board's recommendations and establish an income-based eligibility criterion for the Lifeline and Link-Up programs.

Dated this 18th day of August, 2003.

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By: 
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⁷ Separate Statement of Chairman Michael K. Powell, *Tremendous Opportunities to Build Digital Communications Capabilities of Rural America*, August 6, 2003, ¶ 3.